

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1056 OF 2004

Sunilkumar w/o Shri Madan Mohan Appellant
Tapadia

(Original
Plaintiff)

Vs.

Smt. Shakuntaladevi w/o
Shri Brijmohan Tapadia & Ors.

.... Respondents
(Original
Defendants)

Mr. R.A. Thorat for Appellant.

Ms. V.S. Mhaispurkar for the Respondent Nos. 1 & 2

CORAM : J.H. BHATIA, J.
DATE : 11TH DECEMBER, 2007

P.C.

1) Heard the learned Counsel appearing for the parties. Admittedly there was partnership firm in the name and style M/s Sukhdeo Suganchand. The Plaintiff-Appellant was one of the partners. There were two more partners who have died and according to the Plaintiff, he is the sole surviving partner of that firm. The Respondent/Defendant Nos. 1 and 2 claimed to be the legal heirs of the two deceased partners. The Plaintiff filed S.C. Suit No. 361 of 1998 in the Court of City Civil Court, Mumbai seeking certain reliefs. The objection was taken on behalf of the defendant Nos. 1 and 2 to the tenability of the suit before the City Civil Court on the ground that the claim of the Plaintiff is susceptible to the monetary valuation and the

Plaintiff seeks to avoid the loss in certain property by virtue of agreement executed by defendant Nos. 1 and 2 in favour of defendant Nos. 4 and 5 in respect of certain immovable properties as well as movable properties, assets and profit and loss of the firm. The value of the share of the Plaintiff which is likely to be effected by the said transactions and in which the Plaintiff wants to avoid loss is more than Rs.50,000/-. Therefore, the City Civil Court does not have pecuniary jurisdiction. It was the contention of the Plaintiff that the reliefs sought by him are not susceptible to the monetary evaluation and therefore the suit is liable to be valued under Section 6(iv)(j) of Bombay Court Fees Act at Rs.600/- for the purpose of Court fees and jurisdiction.

2) The learned Judge of City Civil Court framed following issue :

"Whether Defendant Nos. 1 and 2 prove that this Hon'ble Court has no pecuniary jurisdiction to entertain and try the present suit.?"

. After hearing the party, the learned Trial Court came to the conclusion that the reliefs

sought by the Plaintiffs are susceptible to the monetary evaluation which will have to be the value for the purpose of the Court fees under Article 7 of schedule 1 of The Bombay Court Fees Act. It was also held that the Plaintiff wants to set aside the agreements and thereby to prevent the loss which would be more than Rs.50,000/- taking into consideration the value of the immovable property and other assets. With these findings, the Trial Court directed to return the Plaint to the Plaintiff for presentation to the proper Court under Order 7, Rule 10 of C.P.C. The plaintiff has challenged the said order in this appeal.

3) Mr. Thorat, learned Counsel for the Plaintiff-Appellant has advanced the same arguments which were advanced before the Trial Court also, in support of the contention that the Trial Court is wrong in coming to the conclusion that the suit is susceptible to monetary evaluation. To appreciate the arguments of the learned Counsel for the parties and the impugned order, the Prayer (b) and (b-1) may be quoted here.:

dated Defendant of and said	"(b) 6th Nos. the dispose properties	For a declaration that two agreements January 1995 executed by the 1 and 2 at Bombay in favour Defendant No.4 purporting to sell off their alleged share in the to the Defendant No.4 and
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the two Power of Attorneys dated 6th
 January 1995 executed by the Defendant No.
 3 before the Sub Registrar at Bombay under
 Serial Nos.16 and 17 of 1995 purported to
 authorised the Defendant No.3 to deal with
 the said properties or any part or portion
 thereof and all the actions of the
 Defendants in pursuance thereof are illegal
 and nonest and are of no effect in law and
 are not binding upon the Plaintiff and the
 said firm;

(b-1) For a declaration that the two
 agreements dated 17th April 1997 being
 Exhibits 'C' and 'D' hereto purported to
 have been executed by the Defendant Nos. 1
 and 2 at Mumbai in favour of the Defendants
 Nos. 5 and 4 respectively at Mumbai on
 15th April 1997 and 22nd April 1997 being
 Exhibits 'E' and 'F' hereto purported to
 have been executed by the Defendant Nos. 1
 and 2 in favour of the Defendants Nos. 5
 and 3 respectively at Mumbai on 15th April
 1997 and 22nd April 1997 in respect of
 firm's properties at Thiruvottaiyur and
 Pallavaram respectively and the purported
 agreement as assignment dated 21st April
 1997 being Exhibit 'G' hereto executed by
 the Defendant Nos. 1 and 2 at Mumbai in
 favour of the Defendant Nos.4 in respect of
 their alleged share, right, title and
 interest in the movable assets and Profit
 and Loss of the said firm of M/s Sukhdeo
 Suganchand having its trade name as M/S
 Suganchand and Company and all actions of
 the Defendants pursuant to the said alleged
 documents are illegal and nonest and are of
 no effect in law and not binding upon the
 Plaintiff and the said firm;"

4) Admittedly in the firm, there were three

partners. The Plaintiffs had 25 per cent shares.
 Other two partners namely Shri Mohan s/o Suganchand
 Tapadia and Smt. Radhabai w/o Suganchandji Tapadia
 had 25 per cent and 50 per cent share respectively
 in the Profit and Loss of the firm. If the prayers
 made by the Plaintiff and the reliefs sought by him
 are taken into consideration, it becomes clear that

as per Prayer clause (b-1), the Plaintiff has sought a declaration that two agreements dated 17/4/1997 and 21/4/1997 being Exhibit 'C' and 'D' purported to have been executed by the Defendant Nos. 1 and 2 in favour of Defendant Nos. 4 and 5 respectively to sell and dispose of their share, right, title and interest in the firm's property in Thiruvottaiyur and Pallavaram, Chennai illegal, nonest and not binding on the firm and himself. These are immovable properties and value of which is said to be more than Rs.10 Lacs. He also seeks declaration that the assignment dated 21/4/1997 Exhibit 'G' executed by the Defendant Nos. 1 and 2 in favour of Defendant No. 4 in respect of their alleged share, right, title and interest in the movable assets and profit and loss of the said firm are illegal and no effect in law and not binding upon the Plaintiff and the said firm.

5) Mr.Thorat, learned Counsel for the Plaintiff-Appellant contended that the Defendant Nos. 1 and 2 have no legal rights to deal with the property of the firm and to dispose of the same. Their only remedy could be to seek the account of the firm as Legal Representative of deceased two partners and therefore suit is not susceptible to monetary valuation. I am unable to accept this contention. Admittedly the value of the property

and even 25 per cent share of the Plaintiff in the suit property is more than Rs.50,000/-, which is the limit of pecuniary jurisdiction of the City Civil Court, Bombay. If the Plaintiff would be seeking merely a declaration that the Defendants cannot deal with the firm or its property unless the accounts of the firm are settled, possibly the matter could be different. But, in the present matter, the Defendant Nos. 1 and 2 have already entered into the agreement for sale of certain immovable property of the firm. They have also entered into an agreement in favour of the Defendant No. 4 for assignment of the movable assets and profit and loss of the firm. Thus, by these three different agreements, the Defendant Nos. 1 and 2 seek to transfer the immovable and movable property of the firm in which they claim to have certain rights as Legal representatives of the deceased partners. The Plaintiff seeks to set aside those agreements and thereby seeks to prevent loss to himself in respect of the said property. Taking into consideration the value of the immovable and movable properties and other assets of the firm, the loss which the Plaintiff seeks to prevent is certainly more than Rs.50,000/-. The learned Trial Court referred to Para 6 of the plaint, which clearly reveals that the Plaintiff seeks to prevent the wrongful loss to the Plaintiff

and the firm. Article 7 in Schedule 1 of the

Bombay Court Fees Act reads as follows :

"7. Any other plaint, application or petition to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss, including cases wherein application or petition is either treated as a plant or is described as the mode of obtaining the relief as aforesaid.

A fee on the amount of the monetary gain, or loss to be prevented, according to the scale prescribed under Article 1."

. From this, it is clear that whether

plaintiffs seek to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss, a Court fee on the amount of the monetary gain, or loss to be prevented has to be paid according to the scale prescribed under Article 1.

6) The learned Counsel for the Plaintiff-Appellant however, tried to bring the case of the Plaintiff under Section 6(iv)(j) of the Bombay Court Fees Act. However, the said provision is applicable to the suits for declaration with or without injunction or other consequential reliefs where the subject matter in dispute is not susceptible to monetary evaluation. Taking into consideration the nature of the suit filed by the Plaintiff, it is impossible to accept that the suit

is not susceptible to monetary evaluation. Taking into consideration the facts and circumstances, the learned Trial Court has right in coming to the conclusion that the value of the suit has to be more than Rs.50,000/- and therefore the City Civil Court does not have pecuniary jurisdiction to entertain the suit.

7) Mr. Thorat, learned Counsel for the Plaintiff-appellant vehemently contended that when the issues have been framed and when the case does not fall under Section 9(A) of C.P.C. as applicable in Maharashtra, all the issues should have been decided finally after final hearing of the matter as provided under Order 14, Rule 2. It is true that Section 9(A) of the C.P.C. will not be applicable to the facts of the present case. However, when the Court comes to the conclusion that the suit is beyond its pecuniary jurisdiction, it is not necessary for the Court to proceed with the trial and give findings to all the issues as required under Order 14, Rule 2. The matter has to be dealt with under Order 7, Rule 10 and the Court can direct to return the plaint to the Plaintiff for presentation before the Court having jurisdiction. The learned Trial Judge in the present case has directed exactly like that. Order

XIV, Rule 2 reads as follows :

" While the Sub Rule-1 directs that the Court shall pronounce Judgment on all issues, these directions are subject to the provisions of Sub Rule 2. From Sub Rule 2, it becomes clear that when any issue relates to the jurisdiction of the Court or (2) a bar to the suit created by any law for the time being in force, the Court may proceed with the suit to decide that issue if the suit can be disposed of by deciding issue by that particular issue.

8) In the present case, the defendants have raised issue of pecuniary jurisdiction of the Court and therefore under Order XIV, Sub Rule 2 also, the Trial Court was justified in deciding that issue and dispose of the suit.

9) In view of above facts and circumstances, I find no merit in the present appeal. The appeal stands dismissed.

(J.H. BHATIA, J.)